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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ROBERT HAMILTON,

10 Plaintiff,

11 v.

12 COMMISSIONER OF SOCIAL SECURITY,

13 Defendant.

Case No. C20-5587-MLP

ORDER

14 **I. INTRODUCTION**

15 Plaintiff seeks review of the denial of his application for Supplemental Security Income
16 and Disability Insurance Benefits. Plaintiff contends the administrative law judge (“ALJ”) erred
17 by failing to provide legally sufficient reasons for rejecting the opinion of an examining
18 psychologist. (Dkt. # 22 at 1.) As discussed below, the Court AFFIRMS the Commissioner’s
19 final decision and DISMISSES the case with prejudice.

20 **II. BACKGROUND**

21 Plaintiff was born in 1966. AR at 466. Plaintiff claims to have only a seventh-grade
22 education but had previously reported that he obtained his GED while incarcerated. AR at 32.
23 Plaintiff has worked as a laborer in a concrete plant, in junk yards/scrap metal business, loaded

1 trains, and worked in construction. *Id.* at 33, 466. Plaintiff was last gainfully employed in April
2 2018. *Id.* at 27.

3 On April 27, 2018, Plaintiff applied for benefits, alleging disability as of October 31,
4 2014.¹ AR at 25. Plaintiff's applications were denied initially and on reconsideration, and
5 Plaintiff requested a hearing. *Id.* After the ALJ conducted a hearing on July 1, 2019, the ALJ
6 issued a decision finding the Plaintiff not disabled under section 216(i) and 223(d) of the Social
7 Security Act. *Id.* at 34. The ALJ found that Plaintiff had the severe impairment of post-traumatic
8 stress disorder ("PTSD"). *Id.* at 27.

9 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
10 Commissioner's final decision. AR at 1. Plaintiff appealed the final decision of the
11 Commissioner to this Court. (Dkt. # 4.)

12 III. LEGAL STANDARDS

13 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
14 security benefits when the ALJ's findings are based on legal error or not supported by substantial
15 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
16 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
17 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
18 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error
19 alters the outcome of the case." *Id.*

20 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
21 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
22 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th

23 ¹ Plaintiff amended the alleged onset date to April 20, 2018. AR at 25.

1 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
2 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
3 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
4 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
5 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
6 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

7 IV. DISCUSSION

8 Plaintiff argues that the ALJ erred by failing to provide legally sufficient reasons for
9 rejecting the opinion of an examining psychologist, Dr. Alysa A. Ruddell, Ph. D. (Dkt. # 22 at
10 1.) Plaintiff contends that the reasons the ALJ provided for his finding that Dr. Ruddell's opinion
11 was unpersuasive were erroneous. (*Id.*) Dr. Ruddell examined Plaintiff but did not review any
12 records. AR at 466. Dr. Ruddell based her findings on Plaintiff's self-report. *Id.* Dr. Ruddell
13 determined that Plaintiff has severe limitations in the ability to understand, remember, and
14 persist in tasks by following very short and simple and detailed instructions and has marked
15 limitations in his ability to perform activities within a schedule, learn new tasks, adapt to changes
16 in a routine setting, communicate and perform effectively in a work setting, maintain appropriate
17 behavior in a work setting, complete a normal work day, and set realistic goals and plan
18 independently. *Id.* at 468.

19 The ALJ found Dr. Ruddell's opinion unpersuasive for the following reasons: (1) the
20 opinion was inconsistent with the opinions of Dan Donahue, Ph.D. and Steven Handy, M.D; and
21 (2) inconsistent with the Plaintiff's work history, ability to regularly attend appointments, and
22 ability to co-parent his daughter. AR at 33. Plaintiff argues that these are not specific and
23 legitimate reasons for rejecting Dr. Ruddell's opinion. (Dkt. # 22 at 3.) The Commissioner

1 counters first as to the standard the Court should apply in analyzing the ALJ's decision: arguing
2 that the previous standard using specific and legitimate is no longer the appropriate standard.
3 And, using the new standard, the Commissioner argues that the ALJ's decision with respect to
4 Dr. Ruddell's opinion was supported by substantial evidence. At the threshold, the Court
5 addresses the appropriate standard.

6 The regulations effective March 27, 2017, 20 C.F.R. §§ 404.1520c(c), 416.920c(c),
7 require the ALJ to articulate how persuasive the ALJ finds medical opinions and to explain how
8 the ALJ considered the supportability and consistency factors. 20 C.F.R. §§ 404.1520c(a)-(b),
9 416.920c(a)-(b). The regulations require an ALJ to specifically account for the legitimate factors
10 of supportability and consistency in addressing the persuasiveness of a medical opinion. Thus,
11 the regulations require the ALJ to provide specific and legitimate reasons to reject a doctor's
12 opinions. *See, e.g., Kathleen G. v. Comm'r of Social Sec.*, No. C20-461 RSM, 2020 WL
13 6581012, at *3 (W.D. Wash. Nov. 10, 2020) (finding that the new regulations do not clearly
14 supersede the "specific and legitimate" standard because the "specific and legitimate" standard
15 refers not to how an *ALJ* should weigh or evaluate opinions, but rather the standard by which the
16 *Court* evaluates whether the ALJ has reasonably articulated his or her consideration of the
17 evidence).

18 Further, the Court must continue to consider whether the ALJ's analysis is supported by
19 substantial evidence. *See* Revisions to Rules Regarding the Evaluation of Medical Evidence, 82
20 Fed. Reg. 5852 (January 18, 2017) ("Courts reviewing claims under our current rules have
21 focused more on whether we sufficiently articulated the weight we gave treating source opinions,
22 rather than on whether substantial evidence supports our final decision [T]hese courts, in
23 reviewing final agency decisions, are reweighing evidence instead of applying the substantial

1 evidence standard of review, which is intended to be highly deferential standard to us.”).

2 Accordingly, the Court applies the “specific and legitimate” standard in evaluating the ALJ’s
3 decision.

4 **A. The ALJ Did Not Err by Finding Dr. Ruddell’s Opinion Unpersuasive**
5 **Because it is Inconsistent with Other Medical Opinions**

6 As the ALJ noted, Dr. Ruddell’s opinion was inconsistent with the opinions of Dr.
7 Donahue and Dr. Handy. AR at 33. For example, unlike Dr. Ruddell, both Drs. Donahue and
8 Handy found that the Plaintiff was calm and cooperative and had only mild attention and
9 concentration deficits. *Id.* at 32 (citing AR at 170-71, 198-99.) The ALJ further found that Drs.
10 Donahue and Handy’s opinions were supported by the objective evidence of the record. *Id.* at 33.
11 For example, the ALJ determined that Drs. Donahue and Handy’s opinions were consistent with
12 the results of a mental status exam finding Plaintiff only had mild attention and concentration
13 deficits; made direct eye contact, mood was mildly anxious, was pleasant and cooperative, and
14 that his thought process was organized and thought content was reality based. *Id.* at 29, 31. The
15 ALJ also relied on Dr. Donahue’s findings that Plaintiff was able to work in the past despite his
16 diagnosis of PTSD as another inconsistency with Dr. Ruddell’s opinion that Plaintiff would have
17 trouble completing a normal workday and work week without interruptions from psychologically
18 based symptoms. *Id.* at 33. Accordingly, the Court finds that the ALJ gave specific and
19 legitimate reasons for discounting Dr. Ruddell’s opinions and the ALJ’s reasoning was supported
20 by substantial evidence in the record.

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1 **B. The ALJ Did Not Err by Finding Dr. Ruddell’s Opinion Unpersuasive**
2 **Because it is Inconsistent with Plaintiff’s Work History, Routine, and**
3 **Childcare Duties**

4 The ALJ also found Dr. Ruddell’s opinion unpersuasive as it was inconsistent with “the
5 claimant’s work history and with his ability to regularly attend required appointments and
6 co-parent his daughter.” AR at 33. The Court addresses each basis in turn.

7 *a. Work History*

8 Plaintiff argues that the ALJ’s finding as to his work history was not supported by
9 substantial evidence because the capacity to perform work in past, prior to the date of disability,
10 is not a valid reason to reject a provider’s opinion. (Dkt. #22 at 5 (citing *Treviso v. Berryhill*, 871
11 F.3d 664, 681 (9th Cir. 2017).)

12 The Commissioner’s position is that the ALJ’s reasoning with respect to Plaintiff’s work
13 history was based on evidence that Plaintiff lost his job because of his criminal history and not
14 his PTSD. (Dkt. # 23 at 7.) The ALJ’s conclusion that Plaintiff’s employment was truncated for
15 non-impairment-related reasons was also supported by Plaintiff’s statement to Dr. Ruddell that
16 he “did not want another job.” (*Id.* at 7 n.1 (citing AR at 466).) An ALJ is entitled to draw
17 inferences logically flowing from evidence that Plaintiff may not have been motivated to work.
18 *See Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008). Here, the ALJ’s conclusion that
19 there were reasons other than Plaintiff’s disability that caused him to leave his prior employment
20 and not seek new employment was reasonable.

21 *b. Regularly Attend Required Appointments and Co-Parent His Daughter*

22 According to Plaintiff, his attempts to live a normal life, by participating in recommended
23 mental health treatment and caring for his child, are not valid reasons to discount Dr. Ruddell’s
opinion that he is significantly impaired in his ability to perform effectively in the workplace.

(Dkt. # 22 at 5.) Plaintiff also contends that the ALJ's reliance on his co-parenting duties was in error because the record is silent on the details as to how he co-parents his daughter. (Dkt. # 22 at 5-6 (citing *Treviso*, 871 F.3d at 676.) The Court agrees with Plaintiff that Plaintiff's limited attempts to live a normal life, seek medical care, and care for his child are not valid reasons to discount Dr. Ruddell's opinion. *See Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) ("This court has repeatedly asserted that the mere fact that a plaintiff has carried on certain daily activities, such as grocery shopping, driving a car, or limited walking for exercise, does not in any way detract from her credibility as to her overall disability. One does not need to be 'utterly incapacitated' in order to be disabled.") (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)); *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987) (noting that a disability claimant need not "vegetate in a dark room" in order to be deemed eligible for benefits). Although the ALJ erred by including these activities as a basis for discounting Dr. Ruddell's opinion, the ALJ nevertheless gave other specific and legitimate reasons for discounting the opinion and therefore the inclusion of these activities is harmless error. *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1163 (9th Cir. 2008) (as long as remaining reasons are valid, providing improper reasons is harmless error).

V. CONCLUSION

For the foregoing reasons, the Commissioner's final decision is **AFFIRMED**, and this case is **DISMISSED** with prejudice.

Dated this 9th day of July, 2021.



MICHELLE L. PETERSON
United States Magistrate Judge